

Pension Benefit Guaranty Corporation

§ 4003.58

the name(s) and address(es) (if known) of such other person(s).

[61 FR 34012, July 1, 1996, as amended at 73 FR 38120, July 3, 2008]

§ 4003.55 Opportunity to appear and to present witnesses.

(a) At the discretion of the Appeals Board, any appearance permitted under this subpart may be before a hearing officer designated by the Appeals Board.

(b) An opportunity to appear before the Appeals Board (or a hearing officer) and an opportunity to present witnesses will be permitted at the discretion of the Appeals Board. In general, an opportunity to appear will be permitted if the Appeals Board determines that there is a dispute as to a material fact; an opportunity to present witnesses will be permitted when the Appeals Board determines that witnesses will contribute to the resolution of a factual dispute.

(c) Appearances permitted under this section will take place at the main offices of the PBGC, 1200 K Street NW., Washington, DC 20005-4026, unless the Appeals Board, in its discretion, designates a different location, either on its own initiative or at the request of the appellant or a third party participating in the appeal.

§ 4003.56 Consolidation of appeals.

(a) *When consolidation may be required.* Whenever multiple appeals are filed that arise out of the same or similar facts and seek the same or similar relief, the Appeals Board may, in its discretion, order the consolidation of all or some of the appeals.

(b) *Representation of parties.* Whenever the Appeals Board orders the consolidation of appeals, the appellants may designate one (or more) of their number to represent all of them for all purposes relating to their appeals.

(c) *Decision by Appeals Board.* The decision of the Appeals Board in a consolidated appeal shall be binding on all appellants whose appeals were subject to the consolidation.

§ 4003.57 Appeals affecting third parties.

(a) Before the Appeals Board issues a decision granting, in whole or in part,

the relief requested in an appeal, it shall make a reasonable effort to notify third persons who will be aggrieved by the decision of the following:

- (1) The pendency of the appeal;
- (2) The grounds upon which the appeal is based;
- (3) The grounds upon which the Appeals Board is considering reversing the initial determination;
- (4) The right to submit written comments on the appeal;
- (5) The right to request an opportunity to appear in person or through a representative before the Appeals Board and to present witnesses; and
- (6) That no further opportunity to present information to the PBGC with respect to the determination under appeal will be provided.

(b) Written comments and a request to appear before the Appeals Board must be filed within 45 days after the date of the notice from the Appeals Board.

(c) If more than one third party is involved, their participation in the appeal may be consolidated pursuant to the provisions of § 4003.56.

§ 4003.58 Powers of the Appeals Board.

(a) In addition to the powers specifically described in this part, the Appeals Board may request the submission of any information or the appearance of any person it considers necessary to resolve a matter before it and to enter any order it considers necessary for or appropriate to the disposition of any matter before it.

(b) The Appeals Board may refer certain appeals to another PBGC department or to Appeals Board staff to provide a response to the appellant. The response from another PBGC department or Board staff shall be in writing and address the matters raised in the appeal. The response may be in the form of an explanation or corrected benefit determination. In either case, the appellant will have 45 calendar-days from the date of the response to file a written request for review by the Appeals Board. If a written request for review is not filed with the Appeals Board within the 45-calendar-day period the determination shall become effective pursuant to § 4003.22(a).

§ 4003.59

(1) Appeals that may be referred to another PBGC department or to the Board staff include those that—

(i) Request an explanation of the initial determination being appealed;

(ii) Dispute specific data used in the determination, such as date of hire, date of retirement, date of termination of employment, length of service, compensation, marital status and form of benefit elected; or

(iii) Request an explanation of the limits on benefits payable by PBGC under Part 4022, Subpart B, such as the maximum guaranteeable benefit and phase-in of the PBGC guarantee.

(2) An explanation or corrected benefit determination issued under this subsection is not considered a decision of the Appeals Board. If an appellant aggrieved by PBGC's initial determination is issued an explanation or corrected benefit determination under this section, the appellant has not exhausted his or her administrative remedies until the appellant has filed a timely request with the Appeals Board for review and the Appeals Board has issued a decision granting or denying the relief requested. See § 4003.7 of this part.

[61 FR 34012, July 1, 1996, as amended at 73 FR 38120, July 3, 2008]

§ 4003.59 Decision by the Appeals Board.

(a) In reaching its decision, the Appeals Board shall consider those portions of the file relating to the initial determination, all material submitted by the appellant and any third parties in connection with the appeal, and any additional information submitted by PBGC staff.

(b) The decision of the Appeals Board constitutes the final agency action by the PBGC with respect to the determination which was the subject of the appeal and is binding on all parties who participated in the appeal and who were notified pursuant to § 4003.57 of their right to participate in the appeal.

(c) The decision of the Appeals Board shall be in writing, specify the relief granted, if any, state the bases for the decision, including a brief statement of the facts or legal conclusions supporting the decision, and state that the

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appellant has exhausted his or her administrative remedies.

§ 4003.60 Referral of appeal to the Director.

The Appeals Board may, in its discretion, refer any appeal to the Director of the PBGC for decision. In such a case, the Director shall have all the powers vested in the Appeals Board by this subpart and the decision of the Director shall meet the requirements of and have the effect of a decision issued under § 4003.59 of this part.

[61 FR 34012, July 1, 1996, as amended at 73 FR 38120, July 3, 2008]

§ 4003.61 Action by a single Appeals Board member.

(a) *Authority to act.* Notwithstanding any other provision of this part, any member of the Appeals Board has the authority to take any action that the Appeals Board could take with respect to a routine appeal as defined in paragraph (b) of this section.

(b) *Routine appeal defined.* For purposes of this section, a routine appeal is any appeal that does not raise a significant issue of law or a precedent-setting issue. This would generally include any appeal that—

(1) Is outside the jurisdiction of the Appeals Board (for example, an appeal challenging the plan's termination date);

(2) Is filed by a person other than an aggrieved person or an aggrieved person's authorized representative;

(3) Is untimely and presents no grounds for waiver or extension of the time limit for filing the appeal, or only grounds that are clearly without merit;

(4) Presents grounds that clearly warrant or clearly do not warrant the relief requested;

(5) Presents only factual issues that are not reasonably expected to affect other appeals (for example, the participant's date of birth or date of hire); or

(6) Presents only issues that are controlled by settled principles of existing law, including Appeals Board precedent (for example, an issue of plan interpretation that has been resolved by the